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New York

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-204632.3

DATE: January 22, 1982

MATTER OF: Numax Electronics, Inc.

DIGEST:

Protest is dismissed where the material issues are before a court of competent jurisdiction and the court has not expressed interest in receiving GAO's views.

Numax Electronics, Inc. protests any award under invitations for bids Nos. DAA09-81-B-2237, 2238, and 2239 issued by the Army to procure major components of the M198 Howitzer fire control system. The Army questioned Numax's responsibility and, because Numax is a small business, referred the matter to the Small Business Administration (SBA) pursuant to the SBA's Certificate of Competency (COC) procedures. The SBA refused to issue a COC. Numax alleges that the SBA failed to consider all of the facts before making its decision.

We will not consider the protest.

While the protest was pending with this Office, Numax filed a suit in the United States District Court for the Eastern District of New York (Civil Action No. 81-4135) seeking permanent injunctive and declaratory relief. The court's resolution of the issues before it, which are substantially similar to that raised here, will control the resolution of the protest. It is our policy not to decide protests where the material issues are before a court of competent jurisdiction unless the court requests, expects or otherwise expresses an interest in receiving our views. 4 C.F.R. § 21.10 (1981). Plaintiff Numax has not requested judicial relief pending a decision by this Office, and the court has not indicated an interest in our decision.

The protest is dismissed. See Triple A Machine Shop, Inc., B-204027, August 31, 1981, 81-2 CPD 188.

Harry R. Van Cleve
Harry R. Van Cleve
Acting General Counsel